UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

[Reprinted form the Federal Register of September 7, 1956]

PROPOSED RULE MAKING

[7 CFR Parts 923, 972, 1012]

[Docket Nos. AO-251-A1, AO-177-A15, AO-278]

HANDLING OF MILK IN APPALACHIAN, TRI-STATE AND BLUEFIELD MARKETING AREAS

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER AMENDING ORDER FOR APPALACHIAN MARKETING AREA AND PROPOSED MARKETING AGREEMENT AND ORDER FOR THE BLUEFIELD MARKETING AREA

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Bluefield, West Virginia, February 6-10, 1956, pursuant to notice duly published in the FEDERAL REGISTER on January 21, 1956 (21 F. R. 499).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Agricultural Marketing Service, on August 1, 1956 (21 F. R. 5824) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision and notice of oportunity to file written exceptions thereto.

Preliminary statement. A public hearing on the record of which the recommended regulatory provisions set forth below with respect to the Appalachian and Bluefield marketing areas were formulated was called by the Agricultural Marketing Service, United States Department of Agriculture, following receipt of a petition filed by the Tri-State Milk Producers Association, Inc. The hearing was held at Bluefield, West Virginia, February 6-10, 1956, pursuant to notice duly published in the FEDERAL REGISTER on January 21, 1956 (21 F. R. 499). The period until March 24, 1956, was reserved to interested parties for the filing of briefs on the record.

The hearing gave consideration, among other things, to the alternative possibilities of (1) expanding the present Appalachian marketing area to regulate the handling of milk in all or part of certain counties in Virginia, West Virginia, and Kentucky referred to as the "Bluefield market"; (2) expanding the present Tri-State marketing area (Huntington district) to regulate the handling of milk in all or part of such counties; or (3) issuing one or more separate orders to regulate the handling of milk in all or part of such counties.

In view of the findings and conclusions set forth below with respect to the need for regulation in the proposed Bluefield marketing area and to the location and organization of such market, it is concluded that the marketing of milk in such marketing area and that in the Tri-State marketing area do not warrant regulation on common terms. It is concluded, therefore, that the record of this hearing does not support expansion of the Tri-State marketing area or need for amendment of any other provision of the order for the latter marketing area. The extent of the relationship existing between the Appalachian and Bluefield markets is discussed below.

At the opening of the hearing, certain distributors of milk serving the proposed Bluefield marketing area moved that consideration be given on this hearing only to the evidence concerning the proper marketing area to be regulated, and that any decision on the handling of milk in the Bluefield market made as the result of the hearing be limited to a determination as to what counties or areas should be made subject to regulation. It was further moved that following a decision on the extent of the area to be regulated, the hearing should be reopened to receive evidence as to the specific regulatory terms and provisions which should be applied. These motions were renewed after the receipt of evidence on the marketing area proposals and again in the brief filed on behalf of such handlers.

Careful consideration has been given to the motions. It is concluded, however, in light of the findings and conclusions which follow, that the record provides a basis for appropriate regulation of the Bluefield marketing area as proposed herein. The motions (1) to limit the current decision to a determination of the area to be regulated, and (2) to reopen the hearing for further evidence on other issues following such a determination, are hereby denied.

Rulings on exceptions. In arriving at the findings and conclusions included in this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions herein are at variance with the exceptions, such exceptions are overruled.

Proposed marketing agreement and order for the Bluefield marketing area—Statement of issues. The material issues of record with respect to the proposed marketing agreement and order regulating the handling of milk in the Bluefield marketing area related to:

1. Whether the handling of milk in the market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

2. Whether marketing conditions justify the issuance of a marketing agreement or order; and

3. If an order is issued what its provisions should be with respect to:

(a) The scope of regulation;

(b) The classification of milk;

(c) The level and method of determining class prices;

(d) The method to be used in distributing proceeds to producers; and

(e) Administrative provisions.

Findings and conclusions. Upon the evidence adduced at the hearing and the record thereof, the following findings and conclusions are hereby made with respect to the proposed marketing agreement and order regulating the handling of milk in the Bluefield marketing area:

Commerce in milk. The handling of milk in the Bluefield marketing area, as defined herein, is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and milk products.

The marketing area defined in the proposed order includes the counties of Mercer and McDowell in the State of West Virginia, and Tazewell County in Virginia. There are continuous and substantial movements of milk across state lines both in the procurement of milk from producers supplying this marketing area and the sale of fluid milk and milk products by handlers to consumers.

Milk produced on farms in the States of Kentucky, Ohio, Virginia, and West Virginia is inextricably commingled at a milk distributing plant located at Welch, West Virginia. Milk produced in Virginia and West Virginia is received and commingled at plants located at Bluefield, Virginia and Bluefield, West Virginia. Such milk is bottled and distributed in fluid form throughout the marketing area. Milk from farms in Kentucky and Ohio is sent to a bottling plant in the West Virginia segment of the proposed marketing area and the bottled products then are returned to Kentucky and Ohio for distribution to consumers. Similarly, milk produced on farms in Virginia is sent to a bottling plant at Bluefield, West Virginia, and the bottled products are returned for distribution in Virginia. Milk produced within the State of West Virginia and sold in fluid form within that portion of the marketing area in West Virginia is in direct competition with milk produced in other States. The same situation exists with respect to milk produced within the State of Virginia and sold in fluid form within that portion of the marketing area in Virginia.

Fluid milk bottled in Bluefield, Virginia, is distributed to consumers in Pike County, Kentucky, and in McDowell and Mercer counties in West Virginia. Fluid milk and fluid milk products move from plants in Welch and Bluefield, West Virginia, to wholesale and retail outlets in Boyd, Floyd, and Pike counties, Kentucky; Bland, Buchanan, Giles, and Tazewell counties, Virginia; and Cabell County, Ohio. One handler, who would be regulated under the proposed order receives manufactured milk products from a company-affiliated plant located in the Tri-State market (a federally-regulated area) for distribution in the Bluefield area. On a supplemental supply basis substantial quantities of milk produced in the states of Maryland, Ohio, and Wisconsin are frequently imported by handlers in the Bluefield marketing area to meet a portion of the bottled milk requirements during the low production season of the year.

The seasonal reserve of locally-produced Grade A milk is used in the manufacture of cottage cheese, ice cream, nonfat dry milk solids, and condensed milk. These products, made from producer milk, are manufactured in Virginia and West Virginia plants and are sold in several States within this section of the country.

Need for regulation. The marketing and pricing conditions in the Bluefield marketing area require the issuance of a milk marketing agreement and order to establish and maintain orderly marketing conditions. Such an order will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. For reasons stated in this decision the regulation should be separate from those covering the Appalachian and Tri-State marketing areas.

At least six pricing plans for milk delivered by farmers are operative in the Bluefield market. In addition, the variations in milk classification methods used by handlers affect the relative prices paid to the producers. The pricing and classification plans used have caused wide disparity in returns to producers.

Certain milk distributed in this area is classified for pricing purposes pursuant to the provisions of the Federal milk orders for the Appalachian, Clarksburg, and Tri-State marketing areas. An order issued by the Virginia State Milk Commission applies to milk distributed from a Bluefield, West Virginia, plant into Giles County, Virginia. These regulatory pricing plans which affect milk marketing in this area have varying methods of milk classification for pricing purposes.

Pricing plans devised by handlers (as hereinafter defined) utilize still different methods of classification. One handler, who distributes fluid milk products in this area from a plant located in West Virginia, has established three different classes for pricing purposes, as follows:

(1) Class I—fluid milk products distributed locally (Bluefield, West Virginia and vicinity);

(2) Class I (Kentucky)—fluid milk products distributed in Pike County, Kentucky, and milk separated for buttermilk, chocolate milk drinks, cottage cheese, and for the standardization of fluid milk; and

(3) A class for surplus milk.

This method of pricing has resulted in fluid milk products in Class I distributed by such handler in the proposed marketing area being priced as much as $1.22 above the price for fluid milk products distributed from the same plant to outlets in Kentucky. The Class I (Kentucky) price of this handler is based on, and equivalent to, the Huntington district Class I price under the Tri-State order. Also, this handler purchases milk produced in Virginia and distributes milk in Virginia under the producer and resale price regulations of the Virginia State Milk Commission for the Giles County, Virginia, market. Milk produced under regulation of the Virginia State Milk Commission customarily is priced higher than that sold locally in the Bluefield market.

Another handler, with a plant located in Virginia, has established three classes for pricing purposes, as follows: (1) Class I—fluid milk products distributed in Virginia; (2) Class IA—fluid milk products distributed outside the State of Virginia, buttermilk, and ice cream; and (3) a class for surplus milk. Under this method of pricing fluid milk products in Class I have been priced as high as $6.05 per hundredweight (4.0 percent butterfat basis) when at the same time fluid milk products in Class IA were priced at $4.11 per hundredweight. The Class IA price customarily has been fixed at the level of the Tri-State order Class I price for the Huntington district (adjusted to a 4.0 percent butterfat basis by using the "producer" rather than the "handler" butterfat differential under such order), less 25 cents.

A third handler, with a plant located in West Virginia, prices all his milk as Class I, except for small amounts of seasonal surplus.

The fourth handler in the market is regulated under the provisions of the Tri-State order and thus is required to follow a classification and price plan which differs from the others as described above.

The four local handlers, to which reference has been made, were formerly regulated under a producer price order of the Virginia State Milk Commission which was applicable to the "Southwest Virginia" milk market. They have not been regulated by the Virginia control agency since late 1953, but have continued some aspects of the regulatory pricing program on a voluntary basis. However, the variations in pricing plans for fluid milk distributed in the Bluefield area have resulted in producer returns which vary in excess of $1.00 per hundredweight for milk produced by farmers with farms located in the same production area. In some instances differences in returns per hundredweight occurred among producers delivering to the same handler in the same month.

The "stated Class I prices of such handlers have varied from $4.08 to $6.05 per hundredweight (4.0 percent butterfat basis) for bottled milk products distributed competitively in the same areas during the same periods of time. In addition, different methods of paying for butterfat above and below 4.0 percent are used and there is no uniformity in the computation of producer butterfat differentials. Because of these factors, together with the classification plans used, the stated Class I prices of unregulated handlers do not reflect with accuracy the level of returns actually received by producers for milk used in bottled milk products. This lack of uniformity in pricing and classification techniques has caused inequities among producers.

It is noted further that at least three types of seasonal incentive programs have been incorporated in the prevailing price plans used by those handlers in the market who are not under some regulatory program, notably the following: (1) Variations of "the base and excess" plan, (2) a modified "Louisville" plan, and (3) combination of a modified "Louisville" plan and "base and excess"

plan. Such payment plans also have resulted in inequities among producers.

Handlers using the base and excess plan as a means of obtaining a better seasonal pattern of production frequently changed the period designated as the "base-forming months" without prior notification to the producers. One of these plans provides for some producer milk to be priced as "excess" even in the short production season when the market as a whole is customarily short of milk supplies.

The modified "Louisville" plan was instituted by one handler in 1954, when $0.75 per hundredweight was deducted from the producers' price in the months of April, May, and June, and the same amount per hundredweight added to the price in the months of October, November, and December. Order proponents contend that this resulted in an arbitrary net reduction in returns to such handler's producers since the fall rate of milk production normally is less than in April, May, and June. Producers claim it was their understanding that they would receive in the fall months the full amount of money represented by the deductions made in April, May, and June.

In 1955, the plan was changed without prior notification to the producers and deductions from the producers' price of $0.50 per hundredweight in April and May, and $0.55 in June were made. The amounts subsequently added to the producer's price were $0.50 per hundredweight in October, $0.75 in November, and $0.50 in December. In addition, a "base and excess" plan was instituted in the latter year without any prior notification to producers as to the base-forming period to be used. The changes made in 1955 also resulted in arbitrary reductions in returns to the producers delivering to such handler.

Another disruptive aspect of the latter pricing practice was allocation of varying amounts of surplus among individual producers. Some producers were allocated as much as 40 percent surplus while in the case of other producers no milk was so allocated. This disproportionate distribution of surplus caused a high degree of disparity in prices among producers since the difference between such handler's Class I and surplus prices has been as high as $2.50 per hundredweight.

Many producers in the Bluefield marketing area have no effective means of insuring the accuracy of the weights and tests of their deliveries of milk to handlers. The testing programs of the cooperative and handlers seldom agree on tests made of producers' milk. Producers testified that the cooperative's tests are consistently higher, but that they usually have been unable to obtain adjustments based on the differences shown. In addition, those handlers in the market not under any regulatory program do not permit auditing of their records for the purpose of establishing (1) the accuracy of the utilization of producer receipts according to the classification plan in use, and (2) the appropriate volumes of milk to be paid for as base milk and excess milk. One handler has not paid the cooperative the dues deducted from members and has been delinquent in making payments to cooperative members for their milk.

In summary, the proponent cooperative association has been unable to bargain with handlers concerning prices to be paid for milk received from farmers. Prices paid to producers throughout the Bluefield marketing area are generally at the option of the handler. There is no uniform classification plan whereby farmers supplying the Bluefield marketing area are assured of payment for their milk in accordance with its use. Handlers arbitrarily determine producer butterfat differentials for milk above or below 4 percent in butterfat. There is little uniformity in the seasonal incentive programs now used by handlers. As the result of the producers' inability to obtain satisfactory pricing plans for milk in the Bluefield area plants some producers have shifted their deliveries of milk from this market to plants in Winston-Salem, North Carolina; Charleston, West Virginia; and the Appalachian marketing area. Since the Bluefield market is in a deficit milk production area and supplies customarily have been fairly short in relation to the Class I demand any transfer of milk from the market seriously jeopardizes the delivery of the necessary requirements of fluid milk to this market.

The Federal milk marketing order proposed herein for Bluefield will implement the declared Congressional policy of establishing and maintaining orderly marketing conditions by providing:

(a) A regular and dependable method for determining prices to producers at levels contemplated under the Agricultural Marketing Agreement Act, as amended;

(b) The establishment of uniform prices to handlers for milk received from producers according to a classified price plan based upon the utilization made of the milk;

(c) An impartial audit of handler's records of receipts and utilization to further insure uniform prices for milk purchased;

(d) A means for insuring accurate weights and tests of milk;

(e) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower returns for sale of reserve milk;

(f) Uniform rules for the operation of seasonal incentive which will encourage producers to adjust production seasonally in closer alignment with the relatively even monthly needs for inspected milk; and

(g) Market-wide information on receipts, sales, and other data relating to milk marketing in the area.

Marketing area. The Bluefield marketing area should include all the territory within the counties of McDowell and Mercer in West Virginia, and Tazewell in Virginia.

Producers proposed that the counties of Buchanan and Tazewell in Virginia; McDowell and Mercer in West Virginia; and Floyd and Pike in Kentucky be either (1) established as a separate district within the present Appalachian marketing area, or (2) established as a marketing area to be known as the "Bluefield marketing area" for regulation under a separate marketing order.

One handler proposal would enlarge the marketing area to include in addition to the above-named counties, as proposed by producers, the counties of Boone, Fayette, Greenbrier, Kanawha, Logan, Monroe, Raleigh, Summers, and Wyoming, in West Virginia. This handler, upon further consideration, abandoned the request for the addition of Boone, Fayette, Greenbrier, Kanawha, Monrce, Raleigh, and Summers counties. The same proponent further modified his proposal to include Lincoln, McDowell, Mercer, and Mingo counties in West Virginia.

Another proposal submitted by handlers would adopt all of the counties included in the above handler's final proposal and in addition would include Tazewell County, Virginia, and Floyd and Pike counties, Kentucky. It was further proposed that this proposed marketing area be given consideration as an addition to the Huntington district of the Tri-State marketing area, as an alternative to the two producer proposals.

The problems complained of by the producer proponents of the order center primarily around the handling of milk in plants which either are located in or serve McDowell and Mercer counties, West Virginia. Plants located in McDowell and Mercer counties also handle a large portion of the fluid milk distributed within Tazewell County, Virginia. These three counties constitute perhaps the most populous area in the entire region under consideration and to a large extent are separated from other counties proposed for regulation by mountains and intervening areas which are only sparsely populated. The principal communities located in these counties are Bluefield, Princeton, and Welch, West Virginia, and the city of Bluefield, Virginia. Because of the numerous smaller communities scattered throughout the counties, it appears that orderly marketing can be best achieved by regulating the counties in their entirety rather than to specify particular communities for regulation.

Milk sold for consumption as Grade A milk within all three counties of McDowell, Mercer, and Tazewell must be approved by local health authorities under ordinances, practices, and procedures patterned after the model milk ordinance of the United States Public Health Service. Reciprocal agreements on farm inspections and on finished Grade A milk products for distributors prevail among the area health authorities. Current ratings of the United States Public Health Service are recognized by health authorities as a basis for acceptance of supplemental, or emergency, supplies of milk from distant plant sources. The degree of similarity of minimum health standards throughout the area justifies the uniform application of prices to all inspected milk marketed in these counties.

As previously stated, producers proposed that Buchanan County, Virginia, and Floyd and Pike counties, Kentucky, also be included in the marketing area. There is little, if any, milk distributed in Buchanan County which would not

be under the regulation of either the Appalachian or Bluefield order, without the inclusion of such county in the marketing area. Sales in this country are quite limited because of its rural character. For these reasons it is not necessary to include Buchanan County within either of the defined marketing areas. The reasons for not including Floyd and Pike counties in Kentucky are discussed below in conjunction with the consideration of other additional territory as proposed by handlers.

The relatively populous counties of Logan, Mingo, and Wyoming and the sparsely populated county of Lincoln, in West Virginia, are in a region where little milk is produced locally for distribution in fluid form. This is a coal mining region and extremely deficit as to its own milk supply. Milk is transported rather long distances from the markets of Huntington, West Virginia; Athens, Ohio; Beckley, West Virginia; Bluefield, West Virginia; and Charleston, West Virginia, to serve local needs for fluid milk. The milk imported into this area from Huntington and Athens is under regulation of the Federal milk order covering those communities (Tri-State Order No. 72), and the milk from Beckley has been under the regulation of a recently issued milk order for the Clarksburg marketing area (Clarksburg Order No. 109). Charleston handlers have limited sales in this area which are of minor competitive importance. The issuance of a Bluefield order for the marketing area as adopted above would bring under regulation nearly all the remaining milk distributed in these counties.

A situation similar to that noted for such four counties in West Virginia, applies also in the case of Floyd and Pike counties, Kentucky. The milk imported into this area from Huntington and Athens is under regulation of the Federal milk order covering these communities. Similarly, milk imported into this area from Big Stone Gap, Virginia, and Kingsport, Tennessee, is under regulation of the Federal milk order covering the Appalachian market. The issuance of a Bluefield order for the marketing area as adopted above would bring under regulation nearly all the remaining milk distributed in these counties.

It should be noted that the inclusion of any of the areas discussed above in addition to the counties of McDowell and Mercer, West Virginia, and Tazewell, Virginia, would have the effect of transferring plants at Huntington, West Virginia, and Athens, Ohio, now regulated under the Tri-State order, to regulation under the Bluefield order unless some modification of the present terms of the Tri-State order were made to prevent such a transfer. Regulation of such plants under the Bluefield order would not be in the interest of orderly marketing within the Tri-State marketing area. As above stated, the inclusion of the additional counties probably also would involve a portion of the Charleston market under regulation, while a greater portion of the milk for this substantial market would remain unregulated. The application of a Bluefield order in this manner would create difficult competitive problems for the regulated milk originating at Charleston plants and is not necessary to achieve orderly marketing for producers who have primary interest in the proposed Bluefield regulation. Handlers testified that if their Class I prices were reasonably aligned with those effective under the Tri-State order no competitive disadvantage resulting from the purchase of milk from producers would result from the omission of such counties from the defined marketing area since the bulk of the milk distributed in these counties, other than that distributed by handlers who would be regulated under the Bluefield order, is at present priced under the Tri-State order. The inclusion of these counties in the defined marketing area is not required to achieve orderly marketing conditions for the producers primarily concerned with the Bluefield market plants.

The milk distributors who would be regulated under a separate Bluefield order are in competition throughout the particular counties to be regulated. In addition, some milk is distributed within this area from plants located outside the defined area at Beckley, West Virginia, and Athens, Ohio. The operator of the Beckley plant might also become a handler under the regulation. Although some milk is distributed in Tazewell County by persons regulated as handlers under the order currently in effect in the Appalachian marketing area, no milk is distributed within the confines of the latter marketing area by persons who would become handlers under a separate order for the Bluefield marketing area. It is noted also that the points outside the defined area where there is some competition between handlers to be regulated by a Bluefield order and those currently regulated under the Appalachian order are not numerous. There is substantially greater competition in outside markets between Bluefield handlers and distributors in the Tri-State market and Beckley. From the standpoint of route competition there is insufficient relationship between the Appalachian and Bluefield markets to indicate the propriety of a single regulation for handlers in both markets. Further support for this view is found in the tendency for Bluefield handlers to seek new markets generally to the west and north of Bluefield, West Virginia, rather than to compete more vigorously in Bristol and other markets to the south regulated under the Appalachian order.

Milk subject to regulation. Provision should be made in the order to designate clearly what milk will be subject to the pricing provisions of the order. For this reason, definitions of "handler", "plant" (various types), "producer", "producer milk" and "other source milk" should be provided.

A "handler" is defined to be the operator of an "approved plant". The handler is the person to whom the provisions of the order are applicable. The handler receives the milk of producers and thus must be held responsible for reporting its receipt and utilization. He is the one responsible for paying producers not less than the specified minimum prices. In case a person operates more than one plant at which milk is to be priced, he should be a handler with respect to the combined operations of such plants. If a handler also operates an unregulated plant(s), this definition is not intended to include such person in his capacity as an operator of such type of plant(s). Producer-handlers and other operators of approved plants which do not qualify as "fluid milk plants" (as discussed below) should be considered handlers in order that such persons shall report to the market administrator as may be necessary to determine their status at any given time.

The minimum class prices of the order should apply to that milk eligible for distribution as Grade A milk in the marketing area which is received from dairy farmers at plants primarily engaged in supplying fluid milk for sale on retail and wholesale routes in the marketing area. Such plants are defined as "fluid milk plants." More specifically, a fluid milk plant under the attached order is any plant from which a volume of Class I milk equal to either an average of more than 1,000 pounds per day, or more than 2.0 percent of the approved milk of such plant, is disposed of during the month on routes (including routes operated by vendors) or through plant stores or retail or wholesale outlets (except other fluid milk plants) located in the marketing area.

The order should provide also delivery performance standards for plants from which no wholesale or retail routes are operated, but which represent sources of supply for the market. There are two broad categories of plants that generally provide supplemental supplies of milk for fluid milk markets. One category includes those plants which constitute regular sources of supply and are closely associated with the market by receiving milk subject to the farm inspection of local health authorities. Although there are no such plants serving the Bluefield marketing area at present some provision should be made for the regulation of plants of this type that might become closely associated with the market in the future. Plants of this type are a normal part of the milk procurement facilities in several adjacent markets, and nothing in this order will preclude any plant wherever located from serving the market in the future should a need for its supplies arise. It is concluded that any plant in this category should be included within the definition of a fluid milk plant throughout the year whenever it may become a regular source of supply for any plant from which wholesale or retail routes are operated.

The second category of supply plants are those receiving milk not under the routine farm inspection of health authorities in the market. The Bluefield market receives supplemental milk supplies from a number of plants of this type. These plants normally provide supplemental milk to plants in various other fluid milk markets as well, and their shipments to the Bluefield area for Class I use are primarily seasonal in nature.

Producers proposed that the latter type of plant be included in the definition

of a fluid milk plant when any such plant supplies to the market a monthly total of 70,000 pounds (or more) of milk for each of the months of August through January, inclusive. Producers contended that such plants are a threat to the stability of the market because they are able to deliver large quantities of milk during the low production months from other sources and locations where no minimum price regulations are in effect.

It is quite possible that as a result of handlers receiving milk from outside the order in unlimited quantities a situation could arise in which a significant portion of the market supply of milk would not be subject in any way to the pricing and payment provisions of the order. This could result in (1) a portion of the market supply being procured on a "flat price" basis without regard to use of milk as distinguished from the classified price plan provided in the proposed order, (2) limiting the effectiveness of the pricing and payment provisions of the order as a means of encouraging farmers to produce a year-round supply of pure and wholesome milk for the Bluefield market, and (3) incentive to handlers to use milk from sources outside regulation in preference to seeking an adequate supply of producer milk in all months. These factors would create a constant threat to the entire classified price plan.

It is concluded that such plants should be regulated when they furnish milk, skim milk or cream in fluid form in excess of 70,000 pounds (approximately two full tank loads) per month for the months of August through January, inclusive. In addition, these plants should be brought under regulation and made fully subject to the pricing provisions of the order when any shipments are made to fluid milk plants for the months of February through July, inclusive. This provision is similar to the comparable provision of the Appalachian order and is reasonable in view of the similarity of handler operations in the two markets. Milk subject to other orders issued pursuant to the act should not be made subject to the pricing provisions of the order at any time in order that double regulation may be avoided.

Minor quantities of milk are distributed on wholesale and retail routes from plants located outside the marketing area. Such plants generally are receiving supplies produced at considerable distances from the Bluefield milk production area and are primarily in competition with milk of unregulated handlers in markets outside the Bluefield marketing area. Regulation of such plants might place them in an uneconomic and unfavorable competitive position with respect to sales in their home markets. As long as the limit as to sales such a plant may make in the marketing area are kept relatively low, the volume of unpriced milk in the market would not present a disruptive force. It is concluded that this limit should be placed at 2.0 percent of the Grade A milk received at such plant from all sources, or an average of 1,000 pounds of Class I milk a day, whichever is less. Any plant from which a volume of Class I milk equal to more than 1,000 pounds per day, or 2.0 percent of its receipts of Grade A milk, skim milk or cream, is disposed of in the marketing area should be designated as a fluid milk plant and be made fully subject to regulation. This limited exemption is similar to that currently contained in the Appalachian order.

Any plant from which Class I milk is distributed in the marketing area, but which does not meet the standards for a fluid milk plant, should be defined as an "approved plant" and be required to file reports and submit to audits by the market administrator in order that he may verify the status of such plant.

"Producer" should be defined as any person, other than a "producer-handler", who produces milk under a dairy farm inspection permit issued by a duly constituted health authority which is customarily received at a fluid milk plant. Provision should be made, however, so that the milk of producers regularly received at a fluid milk plant may be diverted for the account of a handler to a nonfluid milk plant at any time during April, May, June and July, and on not more than 15 days during other months, and still be permitted to retain status as producer milk under the order. This will permit milk regularly associated with the market to be diverted to manufacturers during periods of flush production and over week-ends and holidays when supply and demand relationships may require some reserve and surplus milk to be manufactured in plants not regulated by the order. Producers whose milk is so diverted will continue to receive the uniform price under the order and their milk will be available for fluid use when needed. Diverted milk shall be deemed to have been received at the plant from which it was diverted.

"Producer-handler" should be defined as a person who operates a fluid milk plant but handles no milk from dairy farmers other than milk of his own production. A producer-handler should be subject to the order only to the extent that he must submit reports to the market administrator as required and maintain and make available to the market administrator, accounts, records, and facilities, so that the market administrator may verify that such person meets the definition of producer-handler. It appears unnecessary to require under the order that a producer-handler pay any particular price for milk produced on his own farm.

A producer-handler may receive milk from other handlers and still maintain his status as a producer-handler. However, the classification provisions of the proposed order should provide that any milk, skim milk, or cream transferred by a handler to a producer-handler will be Class I milk. Supplemental supplies of milk which may be obtained from other handlers, by virtue of the type of operation involved, may be presumed to be needed by the producer-handler for fluid use and should be classified in the supplying handler's plant as Class I milk. Any milk which a handler receives from a producer-handler would be "other source milk" and would, therefore, be allocated to the lowest class utilization at the fluid milk plant(s) of a handler after the allocation of shrinkage on producer milk. This method of allocating producer-handler milk will insure producers' priority on Class I sales made by the handler to whom milk is supplied. The producer-handler who, by being exempt, enjoys the full advantage of his fluid milk sales, should not also share in the Class I market of other producers.

"Other source milk" should be defined as all skim milk and butterfat contained in products utilized by the handler in his operations, except milk from producers, inventories, and other Class I products received from other fluid milk plants. This includes any non-fluid milk product from any source, including those produced at the handler's plant during the same or an earlier month which are reprocessed or converted to other products during the month in the plant. Defining other source milk in this manner will insure uniformity among all handlers under the allocation and pricing provisions of the order.

Classification of milk. Milk received by regulated handlers should be classified on the basis of the form in which, or the purpose for which, it is used, as either "Class I milk" or "Class II milk."

A classification plan of this type will insure that minimum prices for milk will be uniform among handlers according to use, that a price may be fixed for the milk disposed of as Class I at a level that will bring forth an adequate supply of pure and wholesome milk, and that a necessary reserve of quality milk may be maintained at all times (and used at prices in line with its value when processed into manufactured dairy products) without disrupting marketing and pricing conditions within the established marketing area.

The products which should be included in Class I milk are those distributed to the consumer in fluid form and required by health authorities in the proposed marketing area to be obtained from milk or milk products from approved "Grade A" sources. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products somewhat above the ungraded, or manufacturing, milk price. This higher price should be at such a level that it will yield a uniform (blended) price to producers that will encourage the production of sufficient milk to meet market needs.

Reserve milk not needed seasonally or at other times for Class I use must be disposed of for use in manufactured products. These products are less perishable, are not required to be made from inspected milk, and must be sold in competition with products made from unapproved milk produced throughout the United States. Milk so used should be classified as Class II milk and priced in accordance with its value in such outlets.

In accordance with these standards, Class I milk should comprise all skim milk (including concentrated or reconstituted nonfat milk solids) and butterfat (1) disposed of in the form of milk, skim milk, buttermilk, milk drinks (plain

or flavored), cream (except frozen cream), and any mixture in fluid form of skim milk and cream (except ice cream mix, eggnog, and sterilized products contained in hermetically sealed containers); and (2) not accounted for as Class II milk.

Class I products which contain concentrated skim milk solids such as skim milk drinks to which extra solids have been added or concentrated whole milk disposed of for fluid use, should be included under the Class I milk definition. Products such as evaporated or condensed milk packaged in bulk or in hermetically sealed cans should not be considered as concentrated milk.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from producers, and therefore should be classified separately according to their separate uses. The skim milk and butterfat content of milk products, received and disposed of by a handler, can be determined through certain testing procedures. Some of these products, such as ice cream and cottage cheese, present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable in the case of such products to provide an acceptable means of ascertaining the amount of skim milk and butterfat contained in, or used to produce, these products. This may be accomplished through the use of adequate plant records made available to the market administrator or by means of standard conversion factors of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of any condensed milk product should be based on the pounds of milk or skim milk required to produce such product.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. The handler who first receives the milk from producers should be responsible to the market administrator to establish the classification of, and to make payments to producers for, such milk. Except for such limited quantities of shrinkage which may under certain conditions (as set forth elsewhere in this decision) be classified in Class. II, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value for their milk on the basis of its use.

All skim milk and butterfat used to produce products other than those classified in Class I milk should be Class II milk. Included as Class II milk are products such as ice cream, ice cream mix and other frozen desserts and mixes; butter, cheese, including cottage cheese; evaporated and condensed milk (plain and sweetened); non-fat dry milk solids, dry whole milk; condensed or dry buttermilk; and any other products not specified as Class I milk.

Cream which is frozen and placed in storage should be classified as Class II milk. Such cream is intended primarily for use in ice cream mixes. Any frozen cream or other Class II products which are used later in a fluid milk plant would be considered as other source milk at the time of such use and assigned to the lowest priced utilization in the plant.

A handler proposed that Class II milk include all skim milk and butterfat disposed of as livestock feed, and skim milk that is dumped after prior notification to and opportunity for verification by the market administrator. This handler testified that (1) little recovery value is obtained from fluid milk products returned to the handler's plant and sold as livestock feed, and (2) surplus milk is separated and the skim milk dumped for lack of manufacturing facilities to use all surplus milk.

Milk returned to plants from handler routes in this market frequently cannot be processed for resale as other dairy products. Because of the limited facilities in most handler plants for processing manufactured milk products seasonal surplus in small quantities from time to time does not warrant costs associated with disposition to unregulated plants for manufacture. It is concluded that skim milk contained in any product disposed of as animal feed, and skim milk which is dumped during the months of April, May, June and July, should be Class II milk. Because dumping can be verified only at the time the action is taken the handler should be required to give advance notice to the market administrator so that adequate proof of dumping will be possible.

Handlers have inventories of milk and milk products at the beginning and end of each month which enter into the accounting for current receipts and utilization. Accounting procedure will be facilitated by providing that ending inventories of all products designated as Class I milk, regardless of whether such products are held in bulk or in packages, be classified in Class II milk. Inventories of such products on hand will then be subtracted from Class II use the following month. If any products which are classified as Class II milk because they are held in inventories or later used in Class I, the higher valued use should be reflected to producers unless producer milk was not available for such use.

Inventories of products designated as Class I milk on hand at a fluid milk plant at the beginning of any month during which such plant becomes a fluid milk plant for the first time should likewise be subtracted from the Class II utilization of such plant. This will preserve the priority of assignment of current producer receipts to current Class I use for each month.

As in the case of the Appalachian market the question of multiple reporting periods for allocation purposes was considered. The testimony offered primarily with respect to the proposed revision of the Appalachian order is equally applicable to the Bluefield market. The findings and conclusions on this matter, previously set forth in this decision, likewise are applicable in connection with the Bluefield market and therefore are not repeated in this portion of the decision.

The proposals on the amounts of shrinkage to be allowed in Class II milk under a Bluefield order, were similar to those previously considered in this decision in connection with proposed amendments to the Appalachian order. For the same reasons presented earlier producers opposed the proposals made by handlers.

As in the Appalachian market fluid milk operations take the bulk of the milk delivered by dairy farmers. A high degree of similarity in plant operations exists between the two markets. The classification, allocation and transfer provisions of the two orders are substantially the same. The class prices adopted for the Bluefield market contemplate similar treatment in accounting for and classifying shrinkage. It is concluded from the above that shrinkage should be determined on the same basis as is provided in the Appalachian order. Shrinkage not in excess of 2 percent of the handler's receipts of producer and other source milk should be prorated between producer and other source milk on the basis of the pounds received from each source. Shrinkage not in excess of 2 percent of total receipts of producer milk and other source milk used to produce a Class II product should be classified as Class II milk, and any shrinkage in excess of this quantity should be classified as Class I milk. None of the shrinkage should be assigned to milk received from other fluid milk plants because shrinkage on such milk is allowed to the transferor-handler.

Classification of butterfat and skim milk used in the production of Class II milk items should be considered to have been established when the product is made. Classification of Class I milk should be established when the butterfat or skim milk is disposed of by the handler. However, since some Class I items may be disposed of to other plants for processing, specific classification procedures should be prescribed for milk transferred between plants.

Milk, skim milk, cream, or other products designated as Class I milk transferred by a handler to the plant of another handler, except that of a producer-handler, should be classified as Class I milk unless both handlers claim in their reports to the market administrator that such milk should be classified as Class II milk. However, in the latter event sufficient Class II utilization must be available at the transferee-plant after prior allocation of shrinkage and other source milk. Furthermore, the assignment to classes must be such as will result in the maximum amount of producer milk of both handlers being assigned to Class I milk. These actions will insure that the highest-valued uses should be assigned first to these producers regularly supplying the market.

Producers proposed that milk which is diverted from fluid milk plants to nonfluid milk plants within a range of 100 miles of the marketing area be considered as Class II milk. Reference was made to transfers of surplus milk from a Bluefield plant to a manufacturing milk plant approximately 70 miles away.

One handler proposed that surplus milk which is transported from a fluid

milk plant to a nonfluid milk plant within a range of 250 miles of the transferor-plant be considered Class II milk. Surplus milk from this handler's plant has been moved at times to a manufacturing milk plant approximately 190 miles distant.

It is reasonable and necessary to assure that producer milk will be paid for in accordance with its utilization. This requires verification of the receipts and utilization of milk at nonfluid milk plants which receive producer milk diverted from fluid milk plants. When it is necessary to travel considerable distances to verify the use of milk in nonfluid milk plants, there is excessive administrative expense. At least four nonfluid milk plants within a distance of 200 miles of Bluefield, West Virginia, are available to serve as the major outlets for surplus milk. The costs involved in transporting milk, skim milk, and cream in bulk form are such that generally it would not be economically feasible to move milk in excess of such distance for Class II disposition.

Therefore, it is concluded that milk, skim milk, and cream disposed of to a nonfluid milk plant, including milk which is diverted (sent directly to the nonfluid milk plant from the producer's farm) should be classified as Class I milk, unless the following conditions are met: (1) The operator of a nonfluid milk plant, if requested, must make his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk in such nonfluid milk plant, (2) the nonfluid milk plant is located less than 200 miles, by the shortest hard-surfaced highway distance, from Bluefield, West Virginia, (3) the nonfluid milk plant used, during the month, an equivalent amount of skim milk and butterfat in the product use indicated, and (4) in the case of cream the transfer is made without the Grade A certification of any health authority. For reasons previously stated all Class I milk and milk products transferred to a producer-handler should not be subject to the above reclassification.

One handler proposed that a provision be included under which milk custom-bottled by a handler on behalf of an out-of-area plant could be made exempt from the pooling and pricing provisions of the Bluefield order. Specifically, it was requested that, in an emergency, milk moved from Clarksburg, West Virginia, to a plant at Beckley, West Virginia for bottling purposes and then returned to Clarksburg for sale in the Clarksburg marketing area be deducted from Class I milk in allocation at the Beckley plant. Following the classification plan of the present Appalachian order, such a receipt of milk at Beckley (if the Beckley plant were regulated under the Appalachian order) would be handled as a receipt of "other source milk" and allocated in series beginning with the lowest-priced class. The exemption, under the proposal, would apply only to a quantity of milk equivalent to that returned to the Clarksburg market.

In support of the proposal proponent indicated the possibility that its plant located at Clarksburg may be subject to relocation because the land on which it is situated may be purchased by the State of West Virginia for use as a road or highway. The land has been surveyed by the state and appears to be involved in one of two highway routes under consideration. Thus, it may be necessary to process milk at another location pending the erection of a new plant by the company to serve the Clarksburg market.

A custom-bottling provision in the Bluefield order may be an appropriate method of relieving hardship in an emergency situation, as described by proponent, without inequity to other regulated handlers. On the other hand, it has been found necessary in the general application of milk orders to provide stringent rules concerning the receipt and allocation of milk at regulated plants in order to provide a clear basis on which to determine the extent of the handler's responsibility to producers. Any relaxation of an order to the point that some milk received by the regulated handler would not be controlled pricewise by the order and yet displace producer milk in the highest classification should be carefully constructed in light of a specific emergency in order that such a provision may not be utilized to avoid an order restriction in a situation for which it was not intended.

For the most part the testimony was conjectural. There is a real possibility that the potential situation described will not become a fact. In the event the Clarksburg plant is closed at some future time to give way to the new highway, there may be alternative methods under either the Clarksburg order or the Bluefield order of preventing undue hardship to proponent. For example, proponent has a bottling plant at Fairmont, West Virginia. It may be possible for farmers now shipping to the Clarksburg plant to become regular producers at the Beckley plant by securing a change in health permits. A new plant location at Clarksburg may be found. Certainly proponent will receive advance notice to vacate which will provide opportunity to review the problem presented. The necessity and nature of any relief may be more accurately appraised in light of specific facts concerning the extent and time period of the actual emergency. In view of the above, it is concluded that a custom-bottling provision is not appropriate in the present circumstances.

It was proposed further by such handler that milk transferred to any plant regulated by the Bluefield order from a plant under another Federal order be allocated on a basis comparable to the class of utilization of such milk under the marketing order which covers the transferor's plant. Proponent referred particularly to milk which might be received from plants under either the Tri-State or Clarksburg order.

It was contended that such a transfer provision would assist a handler to hold his market against the inroads of milk brought by distributors in other markets for sale on routes since it would be easier for the local handler to obtain supplementary supplies when short of producer milk. Under the proposal any such milk, classified as Class I under an order such as the Clarksburg order, would be deductible from Class I milk in the Bluefield plant.

It is recognized that through the allocation procedure of assigning producer milk under each order to the highest-priced available uses, a quantity of milk may be classified as Class I milk in the exporting market and allocated, as "other source milk", to Class II milk in the receiving market. However, the deduction of the transferred quantity from Class I milk in the transferee-plant while local producer milk remains in Class II would not be justified under the conditions which prevail in the Bluefield area.

The Bluefield market is located in a deficit production area. Likewise, the Appalachian, Tri-State and Clarksburg markets are located in deficit milksheds. Unlike the Chicago market, referred to by proponent, which is relied upon to furnish supplemental supplies to adjacent markets as needed, none of the above-mentioned markets serves as a "balance wheel" to the supply condition of another of such markets. Each market is independent of the others in supply procurement and sources of outside milk vary. Since local producers of the Bluefield market represent the only fully dependable and reasonably near source of milk for most Bluefield handlers, there appears to be no substantial reason to force producer milk into manufacturing uses while temporary, and perhaps, sporadic, supplies from outside sources are assigned to higher-valued uses. Such procedure would not assist the orderly marketing of milk in the Bluefield area.

Bluefield plants, including proponent's plant, have no substantial capacity to manufacture milk products. Milk imported from other areas is intended primarily to supplement local producer milk in Class I uses. If the need for such supplemental milk is real no handler should experience undue hardship from order requirements under which producer milk is first assigned to the highest-priced class since the bulk of the supplemental milk would be deductible from Class I milk in allocation if actually used for fluid purposes.

In view of the above, inter-market transfers should be allocated in the same general manner as any other milk which is received from sources other than producers. However, since it may be necessary at times to allocate both regulated (priced under another Federal order) and unregulated milk from outside sources as "other source milk" in a Bluefield plant, it is reasonable to allocate the unregulated milk first to the lowest-valued uses prior to the allocation of priced milk in such uses. The latter procedure is adopted.

Class prices. Class I prices should be established at a level which, together with appropriate Class II prices, will return to producers a uniform price sufficient to bring forth the required supply of Grade A milk throughout the year. Class prices established too low will result in the production of insufficient quantities of milk to meet the requirement of the market. However, if prices are too high, it will stimulate production and bring to the market more milk than

is needed for Class I and reasonable "reserve" requirements. An overstimulation of production in excess of fluid milk requirements would result in the development of unnecessary and uneconomic surpluses.

Producers included in their proposals for the Bluefield area the same basic price formula now in use under Appalachian Order No. 23. The purpose of a basic price is to reflect the general economic factors underlying the price for milk. The price of milk used in manufactured milk products reflects, to a large extent, changes in general economic conditions affecting supply and demand, because the markets for most manufactured products are nationwide. For these reasons, many fluid milk markets have found it appropriate to use the prices for butter and nonfat dry milk solids, or the prices paid by condenseries (with differentials over these basic manufacturing prices), to establish fluid milk prices.

In the Bluefield market, prices for milk used for fluid purposes are related to prices paid for milk used for manufacturing purposes since the production and marketing of both types of milk are influenced by many of the same economic conditions. Farms producing milk for both fluid milk and manufacturing milk plants are intermingled to some extent in the Bluefield production area. In addition, manufacturing milk plants serve as alternative outlets for milk which is produced to meet fluid milk requirements. The recommended differential added to the basic formula price should, in general, reflect the additional costs required for Grade A milk to be produced and delivered to Bluefield market handlers in the quantities required to meet the needs for fluid milk and cream consumption in the marketing area. The use of alternative components as included in the attached order in the determination of the basic formula price will reflect the basic factors which establish the full farm value of milk for manufacturing uses at any given time.

In view of these facts, it is concluded that the basic price should be the higher of (a) the average of the prices paid by the 13 "Midwestern condenseries", (b) a price computed on the basis of the daily quotations for 92-score butter at Chicago and prices paid for nonfat dry milk solids f. o. b. manufacturing plants in the Chicago area, or (c) the average of the prices paid for milk received from dairy farmers by nine selected manufacturing plants in or near the local milkshed. This basis for pricing, identical to that in the Appalachian market, will assist in maintaining proper price alignment between the markets.

The concept of adjusting minimum class prices in response to changes in supply and demand conditions, and thereby influencing the production of milk through consequent changes in producers' blend prices, has wider geographical implications today than in the past. In earlier days producers were limited to supplying milk to local markets because of inadequate transportation facilities and the local nature of health regulations and milk distribution systems. Today the technological advances in milk production, including the widespread use of milk cooling equipment on farms; the rapid motor transportation from farms to a number of cities instead of one or two, especially through the advent of bulk farm tank milk pickup; the increased efficiency of milk processing equipment and plants; the increasing importance of paper containers for packaging milk; the use of refrigerated delivery trucks; the sale of milk through vendors and stores in distant cities; and the corollary trend among health authorities of approving sources of milk derived from a wider supply area under agreement for reciprocal inspection—all these factors enable milk to be transported and sold long distances from the point of production and processing.

These developments have been and are influencing the marketing organization and price structure for producer milk and for fluid milk products in the Bluefield marketing area. Recent highway improvements have made this area accessible from a number of markets. That these developments have affected the level of prices paid for milk in the Bluefield marketing area may be noted from the many references in the record to the need of reasonable alignment of Bluefield marketing area prices with prices in the Appalachian, Clarksburg, and Tri-State markets.

Proponents proposed Class I price differentials (over the basic formula price) for the Bluefield marketing area of $1.35 during the months of April, May, and June; $1.80 during the months of February, March, and July; and $2.25 during all other months which would be added to a basic formula price similar to that used under Appalachian Order No. 23. Producers gave the following reasons for establishing differentials in these amounts: (1) The production area for the Bluefield market overlaps the production areas of Charleston, West Virginia; Winston-Salem, North Carolina; Beckley, West Virginia; Smyth-Wythe, Virginia; Pulaski - Montgomery - Giles, Virginia; Roanoke, Virginia; Galax, Virginia; and the Appalachian market; (2) a proper relationship of prices among markets obtaining fluid milk supplies from the same general production area is of utmost importance; (3) current blend prices have not induced an adequate year-round supply of inspected milk for the market; (4) producers have shifted from the Bluefield market to some of the above-named markets which offer higher returns; (5) increased demand for coal in this area has increased economic activity and the demand for dairy products; and (6) the proposed seasonal variation in price is necessary to encourage a more even production pattern throughout the year.

One handler proposed that the price for Class I milk should be the simple average of the prices established for Class I milk under Appalachian Order No. 23 and under Tri-State Order No. 72 (for the Huntington district). This handler, upon further consideration of this proposal, and his modified marketing area proposal (previously discussed), abandoned this price formula suggestion. Another handler proposed that the Class I price should be equivalent to the Class I price as established by the Tri-State order for the Huntington district. Handlers generally stressed the importance of the proper alignment of Class I prices in the Bluefield and Tri-State marketing areas. They testified that they are in competition with handlers from the Tri-State marketing area in the Logan, Pikeville, Williamson, and Prestonburg markets as to a very large proportion of their fluid milk sales. One handler in the Bluefield market who is regulated by the Tri-State order as to part of his supply bottled at a Bluefield area plant has regularly paid at least 31 cents per hundredweight over the minimum Class I price as required for such plant under the Tri-State order.

Consideration should be given to the need for alignment of Class I prices among the marketing areas of Appalachian, Bluefield, Clarksburg, and Tri-State. In this connection official notice is taken of the price formulas of the Appalachian, Clarksburg, and Tri-State orders. The Appalachian, Bluefield, and Clarksburg markets, and the Huntington district of the Tri-State market are all in deficit milk production areas. Although the Appalachian and Bluefield milk production areas overlap in four counties in Virginia, there is very little if any overlapping of either milkshed with the Tri-State milk production area. The costs of feed, farm labor, hay and dairy ration are quite similar in the production areas of the Appalachian and Bluefield markets. Also, the costs of transporting milk from farms to milk plants are not significantly different in the two markets. The major portion of Bluefield handlers' sales, however, are in direct competition with handlers regulated by the Tri-State order. Handlers from these two areas are the major competitors in the Logan, Williamson, Prestonburg, and Pikeville markets.

Exceptions filed by producers referred to the level of Class I price differentials for months other than April, May and June. Producers stressed particularly a closer alignment of Class I prices with the prices established for the Appalachian marketing area in order not to encourage a shift of producer milk from the deficit Bluefield market. In addition, they pointed to the slightly higher level of Class I price differentials in the Clarksburg marketing area.

The Class I price should be established in the Bluefield order by adding a differential of $1.45 during the months of April, May and June; $1.70 during the months of March and July, and $2.10 during all other months, to the basic formula price. Producer supplies of milk in 1955 showed a marked decrease in both July and August when compared to the immediately preceeding flush production months of April, May and June. The production level in February was not greatly different from that in the short production months of September, October, and November preceding. The seasonal variation in Class I price differentials from months of low production to

months of high production and the reverse should be at the same rates of change. Prices should be closely aligned with the Appalachian marketing area in months when supplies are relatively short for both markets in order to prevent unnecessary shifting of producer supplies. However, a wider seasonal pattern of pricing than prevails in the Appalachian market is necessary in view of competition between Bluefield handlers and handlers from the Tri-State market in a common sales area. These markets are more significantly related to the Bluefield market than is Clarksburg as to the major factors affecting the production and marketing of milk.

The average Class I price per hundredweight of 4 percent milk in 1955, f. o. b. market, would have been $5.34 as fixed under the formula. The average Class I price per hundredweight for the same period was $5.40 under the Appalachian order and $5.00 for the Huntington district under the Tri-State order. The formula adopted would have resulted in Class I prices per hundredweight of $5.67 in January and $4.87 in June 1955. The Class I prices per hundredweight in the Appalachian order were $5.67 in January and $5.12 in June, and in the Huntington district under the Tri-State order were $5.53 in January and $4.38 in June. A receiving station which receives milk for shipment to the Appalachian market is located at Rural Retreat in the Virginia segment of the Appalachian milkshed. A location differential of 14.5 cents per hundredweight is deductible from the Class I and uniform prices at this location. At this point, where the Bluefield and Appalachian milksheds overlap, the net returns to producers, after taking into account relative hauling costs, will be, on an annual average basis, in close alinement with those received by Appalachian market producers.

Producers proposed that a "supply-demand adjustment factor" be included in the Class I price formula to further reflect changes in local supply and demand conditions. Although a supply-demand adjustment factor in the pricing formula conceived from local data would be desirable and serve a useful purpose, it is concluded that the development of such a factor from the limited-data available at present locally, or from experience in the Appalachian market, would not reflect the Bluefield marketing conditions adequately and should be delayed until the Bluefield market has had experience under the order. Market experience under regulation is desirable as a basis for determining with accuracy the seasonal patterns of production and demand for use in connection with such a formula. The class prices included in this order will be terminated eighteen months after this order becomes effective, providing an opportunity for review of the market situation based on more detailed information.

The Class II price formula should reflect a reasonable value of milk for manufacturing purposes in the production area of the Bluefield market. The price should be at such a level that handlers will accept and market whatever quantities of milk in excess of Class I requirements may be produced from time to time. However, this price should not be so low that handlers will be encouraged to procure or retain milk supplies solely for the purpose of converting substantial quantities into Class II products when a Class I market exists.

Handlers in the Bluefield market use most of their daily reserves of milk for cottage cheese and ice cream production. The manufacture of limited quantities of producer milk into storable products such as condensed milk and nonfat dry milk solids occurs principally in the flush season of production and at plants not operated by handlers. All products included in Class II may be made from ungraded milk.

Producers provided a tank truck to divert surplus milk from a Bluefield handler's plant to a manufacturing plant during the last surplus production season. A premium over the basic manufacturing milk price was received for such milk.

The level of Class II milk prices in the flush production season should not be below that paid for ungraded milk, since such "pay" prices represent the prevailing value in the milkshed for milk for manufacturing purposes. Handlers who need and desire the entire output of producers during periods of short supply should assume the responsibility of paying producers at least the competitive manufacturing prices for Class II milk throughout the months of flush production.

The production areas of the Appalachian and Bluefield markets overlap. Regulated handlers' outlets for surplus milk during the flush production season from the Appalachian and Bluefield markets are manufacturing plants which are the principal buyers of ungraded milk in the milksheds of the two marketing areas. Official notice is taken of the Class II price formula in Appalachian Order No. 23. The Class II price computed for the Appalachian area during the months of March through August is, and will continue to be, the average of the prices paid for milk received from dairy farmers by nine manufacturing plants in the area. These plants are located at Galax and Abingdon, Virginia; Greenville, Lewisburg, and Murfreesboro, Tennessee; Mayfield and Bowling Green, Kentucky; Statesville, North Carolina; and Chester, South Carolina. It is concluded from the above that the Class II price for the months of March through August at Bluefield plants should be the average of the prices paid for milk received from dairy farmers by the nine manufacturing plants at the above locations.

During the months of below-average production a higher level of prices for Class II milk should be provided in the order so as to encourage the transfer of milk from manufacturing uses to fluid uses during the fall and winter months. In these months there are available outlets for reserve milk in cottage cheese and ice cream which, among manufacturing uses, are preferred outlets. These are also the months when considerable quantities of milk are imported into the market. Supplemental supplies of milk during the short production season are received from areas where the price of milk used in the manufacture of butter and nonfat dry milk solids is an important factor in establishing the prevailing farm values of manufacturing milk. Therefore, it is concluded that the Class II price for the months of September through February, should be the higher of either the price computed pursuant to a butter-nonfat solids formula (4.8 times 92-score Chicago butter price per pound plus 8.2 times price per pound spray process nonfat dry milk for Chicago area, minus 75 cents per hundredweight) or the average of the prices paid by the nine manufacturing plants. This will provide alignment of Class II milk prices with the price of milk for similar uses in the Appalachian market.

As previously pointed out in this decision, it was concluded that butterfat and skim milk should be accounted for separately for classification purposes. It will be necessary, therefore, to adjust Class I and Class II prices of milk in accordance with the average test of milk in each class by a butterfat differential which will reflect differences in value due to variations in the butterfat content in each product. The basing point from which such adjustments are to be made should be 4.0 percent butterfat. This is the basis now used in both the Bluefield and Appalachian marketing areas. The values resulting from multiplying the average price of 92-score butter at Chicago by 0.120 for Class I milk and such butter price by 0.110 for Class II milk will provide an appropriate basis for adjusting such prices in this market.

The use of butterfat differentials in this manner follow standard practices in most fluid milk markets for adjusting for butterfat variations. In order that the Class I butterfat differential may be announced early each month, it is provided that the Class I differential be based on the average price of butter in the preceding month. This will permit the announcement of the Class I butterfat differential at the same time that the Class I price is announced.

The Class II price and the Class II butterfat differential will not be announced until after the end of the month. Although handlers will not know precisely the cost of such milk as it is utilized, they will know that their cost will follow that of their principal competitors for manufactured outlets. Trends in butter prices may be observed from daily and weekly market reports issued by the Department.

The butterfat differential used in making payments to producers should be calculated at the average of the returns actually received from the sale of butterfat in producer milk. The rate to be used for this purpose would be the average of the Class I and Class II differentials weighted by the proportion of butterfat in producer milk classified in each class. Thus, producer returns for butterfat will reflect the actual sale value of their butterfat at the class differentials provided in the order. The producer butterfat differential in no way affects the handlers' costs of milk but merely prorates returns among producers according to the varying butterfat tests of their milk.

Proponents originally proposed that no location differentials be adopted in pricing Class I milk for the Bluefield marketing area. It was pointed out that at present no milk is transported from receiving stations to processing plants. After further consideration, producers suggested that location adjustments should be computed on the basis of the distance between the receiving station and the Court House of either Mercer County at Princeton, West Virginia, or McDowell County at Welch, West Virginia, whichever point is nearest the receiving station. Producers gave the following reasons for establishing location adjustments in this manner: (1) The marketing area consists mainly of numerous small towns, (2) handlers' plants are not located in any one central community, and (3) the above two counties are the main centers of population in the proposed marketing area.

One handler proposed that the Class I price should be reduced for those plants which are outside the Bluefield marketing area by 10 cents per hundredweight of milk for the first 50 miles, and by 1.5 cents per hundredweight of milk for each additional 10 miles, or fraction thereof, that such plants are located from the City Hall of Bluefield, Virginia. This handler contended that a point representing the geographical center of the marketing area would be a desirable point from which to measure the cost to handlers in transporting milk to the market.

The farm value of milk for use in a market is affected, of course, by the cost of delivery to the place of utilization by the handler. Milk delivered directly to a plant located within the marketing area is worth more, by at least the cost of transportation, than is other milk to be utilized in the market but delivered to a plant located at a considerable distance from the market. Therefore, it is important to recognize the costs of transporting Class I milk from receiving stations that might become regular sources of supply for the Bluefield marketing area. In addition, it is important to establish the Class I price for milk delivered to processing plants at points in the marketing area and then provide a schedule of deductions from the Class I milk price as location differentials, or adjustments to such price.

In order to have equitable pricing of milk throughout this elongated marketing area it is necessary to provide points representative of the major communities in the marketing area from which location adjustments may be computed. This is an extended marketing area with numerous communities, or centers of population. The processing plants distributing fluid milk products in this area are not located in one central community. In addition, all plants serving the marketing area may not be located within its geographical limits. Accordingly, multiple points for fixing location adjustments should be used. These points should be the City Halls of Bluefield, and Welch, or the County Courthouse at Princeton, all in West Virginia, whichever is nearest to the plant. In view of the elongated character of the marketing area and the intermingling of routes of handlers with plants located in rather widely separated communities, equitable pricing may be best achieved by omitting location differentials with respect to any plant located less than 50 miles from the nearest of the respective points referred to above.

It is concluded that the Class I price should be reduced 10 cents for plants located between 50 and 60 miles distant, and by 1.5 per hundredweight of milk for each additional 10 miles, or fraction thereof. Such differentials as established by this decision are the same as those prescribed in the Appalachian milk marketing order and are related to the cost of hauling milk by an efficient means under conditions similar to those in this market.

Because of the low cost per hundredweight of milk involved in transporting manufactured milk products the value of milk used in manufactured dairy products is affected little, if any, by the location of the plant receiving that milk. Therefore, no adjustment should be made in the Class II price for reasons of location of the plant at which the producer milk is first received.

Type of pool. The individual-handler type of pool should be included in the order as a means of distributing to producers the returns from the sale of their milk.

Under this method of pooling the minimum prices will be uniform to all producers delivering their milk to the same handler. The "blend", "base", and "excess" prices, as the case may be, for each producer will depend on the proportions of Class I and Class II milk used by the handler receiving such producer's milk. Although each handler subject to the order will be required to pay uniform minimum prices to all the producers who deliver to him during each month the minimum uniform prices payable to producers by the various handlers will differ according to the variations among handlers in the proportion of milk used in each class.

Handlers in this market are primarily distributors of fluid milk and fluid milk products and receive little, if any, excess milk for the purpose of supplying other handlers with supplemental milk. These handlers process reserve milk and surplus milk in their own plants for sale as ice cream and cottage cheese. Seasonal surpluses of any substantial volume are transported to manufacturing plants outside the marketing area. Because there is relatively little surplus milk and because such milk is more or less proportionate among the major handlers blended returns to producers are not expected to vary widely. The proximity of the Appalachian production area (where an individual-handler pool plan is used) to the Bluefield production area should also be considered. Because of the fact that plants are rather widely separated and the marketing area is extensive geographically, each handler disposes of any excess supplies by his own means. There are no particular plants to be regulated which serve to balance supplies among plants. It is concluded that individual-handler pools in the Bluefield marketing area will result in optimum allocation of producer milk among handlers according to the Class I needs of the handlers and in maximum returns to producers from their milk.

Producer payment plan. A base and excess plan of distributing returns for milk among producers should be employed for this market.

Several handlers in the Bluefield market are now relying on various forms of base-excess plans to provide the incentive needed to induce producers to attain a more even production pattern throughout the year. Handlers have established the rules of these base-excess plans and have controlled the adjustment and transfer of bases. Although these plans performed a much-needed function, their actual operation in many cases leaves much to be desired from the standpoint of equity among producers.

Base and excess plans are effective means of improving the seasonal pattern of milk deliveries because they relate returns for milk directly to the individual producer's ability to deliver additional milk in the short production season and somewhat less milk during the season of flush production. In this market handlers' fluid milk sales customarily decline during the flush production season. In these months handlers have experienced difficulty in utilizing efficiently all seasonal excesses of milk. Distribution of producer returns under a base and excess plan will encourage a production pattern more even throughout the year.

It is concluded, therefore, that a base-excess plan similar to that in use in the Appalachian market, applied to all producers, by being made a part of the attached order, will play a useful role in stabilizing marketing and pricing conditions in the area.

The base and excess plan provided herein would provide for the calculation of the daily base of each producer by the market administrator by dividing the total pounds of milk received by all handlers from such producer during the months of September through February by the number of days from the first day milk is received from such producer during those months to the last day of February, inclusive, but by not less than 120 days. On or before April 1st of each year the market administrator would be required to notify each producer, and the handler receiving milk from him, of the daily base established by such producer. Now producers entering the market would not establish a base until they have met the above 120-day requirement in the same manner as other producers.

There are physical limitations, however, to making the reporting sections of the Bluefield order effective September 1, 1956. Therefore, the base of each producer for the appropriate months in 1957 shall be established on his deliveries of milk during the months of October, November, and December 1956, and January and February 1957, provided the producer has shipped milk to the Bluefield market for not less than 90 days in such five-month period.

During the months of August through March all producers would receive the same uniform, or average, price paid by the handler to which they deliver their

milk. For each of the months of April through July, separate uniform prices for "base milk" and "excess milk" would be computed. Class I sales would be allotted first to "base milk." Base milk would be that quantity of milk delivered by each producer up to his average daily base multiplied by the number of days of delivery in the month. The "excess milk" price would be the minimum order Class II price, unless the total Class I sales of the handler exceed the total quantity of base milk received from producers during the month. In this case, the excess milk used for Class I sales would be reflected in the calculation of the excess milk price. Audit adjustments, inventory reclassification, and overages may further enhance the pooled value of "excess milk" from time to time and it is possible that without proper provision the excess milk price might be higher than the base price. As explained in an earlier part of this decision no useful purpose is served in improving the seasonal production pattern when the excess price exceeds the base price. As in the Appalachian order, the uniform prices for base and excess milk should be recomputed whenever the above condition would otherwise occur in order that the two prices may be equal.

Certain rules are necessary in connection with the establishment and transfer of bases in order to provide reasonable administrative workability of the plan. Any transfer of base should be limited to situations where changes in the operation of a farm result because of (1) new ownership, (2) the death, retirement or entry into military service of a producer, or (3) changes in partnership or tenant-landlord arrangements. Since the base plan is effective in determining producer payments in only four months of each year and since all producers must establish a new base each year, other provisions than those contained herein for the transfer of bases are unnecessary.

Handlers should make payments to each producer for milk delivered by such producer at the appropriate uniform prices. If a producer has given a cooperative association written authorization, in the form of a contract, or in any other form, to collect payments for him and association makes a written request for such payments due such producer payment should be made by the handler to the cooperative. A provision authorizing handlers to make payment directly to such qualified cooperative for milk received from producer-members is necessary to enable the association to carry out its essential functions authorized by the enabling act. A cooperative association, if it is to carry out these essential functions, must have full authority in the collective bargaining and selling of member milk. Therefore, it is concluded that each handler with respect to milk received from a producer for which payment is not made to a cooperative association should pay such producer at not less than the applicable uniform price(s) on or before the 15th day after the end of each month. With respect to the producers whose milk was caused to be delivered by a cooperative association which is authorized to collect payment for such milk, the handler shall remit, if requested in writing by the cooperative association on or before the 13th day after the end of such month, an amount equal to the sum of the individual payments otherwise payable to such producers.

In making such payments for producer milk to a cooperative association the handler should at the same time furnish the cooperative association with a statement showing the name of each producer for whom payment is being made to the cooperative association, the volume and average butterfat content of milk delivered by each such producer, and the amounts of and reasons for any deductions which the handler withheld from the amount payable to each producer. This statement is necessary in order that the cooperative association can make proper distribution of the money to the producer-members for whom it makes collections.

Proponents proposed that in addition to the regular monthly payments handlers should be required, upon request, to make advance payments to the producers' cooperative association for member milk. These advance payments would be made on the 23d day of each month for milk received from member producers who have requested an advance from the cooperative association. The payment would be made with respect to milk delivered during the first fifteen days of such month, at not less than the Class II price per hundredweight for the preceding month. Producers indicated that an advance payment for milk would assist in defraying costs more promptly.

Handlers suggested that if advance payments are included they should be made to each producer on or before the last day of each month for milk received from each producer during the first fifteen days of such month, at not less than the Class II price per hundredweight for the preceding month.

One handler makes payments to each producer twice a month on the 4th and 19th days of the month. Other handlers customarily have made advance payments to producers who requested them. The record lacks evidence of any widespread need for the proposed advance payments and, therefore, they are denied.

Administrative provisions. Provisions should be included in the order with respect to the administrative steps necessary to carry out the proposed regulation.

In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term implies the same meaning. Definitions for base and excess milk are included. Such other terms as are defined in the attached order are common to many other Federal milk orders.

Market administrator. Provision should be made for the appointment by the Secretary of a market administrator to administer the order and to set forth the powers and duties for such agency essential to the proper functioning of such office.

Records and reports. Provisions should be included in the order requiring handlers to maintain adequate records of their operations and to make the reports necessary to establish the classification of producer milk and payments due therefor. Time limits must be prescribed for filing such reports and for making the payments to producers.

Handlers should maintain and make available to the market administrator all records and accounts of their operations, together with facilities which are necessary to determine the accuracy of information reported to the market administrator or any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the order. It is provided that each handler shall report his Class I sales outside the marketing area as a separate figure. In view of the extent of such sales adequate data should be compiled for review in the event the scope of the marketing area should require revision.

In addition to the regular reports required of handlers, provision is made for handlers to notify the market administrator of their intentions to import other source milk. Such information on a market-wide basis may assist handlers in locating local sources of producer milk and expedite the transfer of such milk among handlers. It is necessary that handlers retain records to prove the utilization of the milk and that proper payments were made to producers. Since the books and records of all handlers cannot be completed or audited immediately after the milk has been delivered to a plant, it therefore becomes necessary to keep such records for a reasonable period of time.

The order should provide limitations on the period of time handlers shall be required to retain such books and records and on the period of time in which obligations under the order shall terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation on July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F. R. 444). That decision covering the retention of records and limitation of claims is equally applicable in this situation and is adopted as a part of this decision.

Expense of administration. Each handler should be required to pay the market administrator, as his pro rata share of the cost of administering the order, not more than 5 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on (a) producer milk (including such handler's own production), (b) other source milk at a fluid milk plant which is classified as Class I milk, and (c) Class I milk disposed of on routes in the marketing area from a nonfluid milk plant.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order.

The act provides that such cost of administration shall be financed through an assessment on handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. The record indicates that other source milk is received by some handlers to supplement local producer supplies of milk. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment to all producer milk (including the handler's own production) and other source milk allocated to Class I milk.

Plants not subject to the classification and pricing provisions of the order may distribute limited quantities of Class I milk in the marketing area. These plants must be checked to verify their status under the order. Assessment of administrative expense with respect to such milk sold in the marketing area will help to defray the costs of such checks.

In view of the anticipated volume of milk and the costs of administering orders in markets of comparable circumstances, it is concluded that an initial maximum rate of 5 cents per hundredweight is necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 5 cent per hundredweight maximum without necessitating an amendment to the order. This should be done at any time experience in the market reveals that a lesser rate will produce sufficient revenue to administer the order properly.

Marketing services. A provision should be included in the order for furnishing marketing services to producers, such as verifying tests and weights and furnishing market information. These services should be provided by the market administrator and the cost should be borne by the producers receiving the services. If a cooperative association is performing such services for any member producers and is approved for such activities by the Secretary the market administrator may accept this in lieu of his own service.

There is a need for a marketing services program in connection with the administration of an order in this area. Orderly marketing will be promoted by assuring individual producers that payments received for their milk are based on the pricing provisions of the order, and reflect accurate weights and tests of such milk. To accomplish this fully, it is necessary that the butterfat tests and weights of individual producer deliveries of milk as reported by the handler be verified for accuracy.

An important phase of the marketing service program is to furnish producers with current market information. Detailed information regarding market conditions is not now regularly available either to producers or to cooperative associations. Efficiency in the production, utilization, and marketing of milk will be promoted by the dissemination of current information on a marketwide basis to all producers.

To enable the market administrator to furnish such services, provision should be made for a maximum deduction of 6 cents per hundredweight with respect to receipts of milk from producers for whom he renders marketing services. Comparison of the extent of the milkshed and the volume of milk involved with that of the Appalachian market, now under Federal regulation, leads to the conclusion that this will reflect the maximum cost of such services. If later experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing.

General findings. (a) The proposed marketing agreement and order and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(c) The proposed order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Determination of representative period. The month of June 1956 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order amending the order regulating the handling of milk in the Appalachian marketing area in the manner set forth in the attached amending order is approved or favored by producers as defined in the order, and as proposed hereby to be amended, who during such representative period, were engaged in the production of milk for sale in the marketing area as defined in the order and as proposed hereby to be amended.

The same month (June 1956) is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order regulating the handling of milk in the Bluefield marketing area in the manner set forth in the attached order is approved or favored by producers who, during such period, were engaged in the production of milk for sale in the marketing area specified in such marketing order

Order of the Secretary Directing That a Referendum Be Conducted Among the Producers Supplying Milk to the Bluefield Marketing Area, and Designation of An Agent to Conduct Such Referendum

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among the producers (as defined in the proposed order regulating the handling of milk in the Bluefield marketing area) who, during the month of June 1956, were engaged in the production of milk for sale in the marketing area specified in the aforesaid proposed order to determine whether such producers favor the issuance of the order which is a part of the decision of the Secretary of Agriculture filed simultaneously herewith.

Andrew T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 20th day from the date this referendum order is issued.

Marketing agreement and order. Annexed hereto and made a part hereof are documents entitled (1) Marketing Agreement Regulating the Handling of Milk in the Appalachian Marketing Area, (2) Order Amending the Order Regulating the Handling of Milk in the Appalachian Marketing Area, (3) Marketing Agreement Regulating the Handling of Milk in the Bluefield Marketing Area, and (4) Order Regulating the handling of Milk in the Bluefield Marketing Area. These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is therefore ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement for each market, respectively, are identical with those contained in the attached order for such marketing area which will be published with this decision.

This decision issued at Washington, D. C., this 31st day of August 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

Order[1] Regulating the Handling of Milk in the Bluefield Marketing Area

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

CLASSIFICATION

MINIMUM PRICES

APPLICATION OF PROVISIONS

DETERMINATION OF UNIFORM PRICES

BASE RATING

PAYMENTS

EFFECTIVE TIME, SUSPENSION OR TERMINATION

MISCELLANEOUS PROVISIONS

§ 1012.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a tentative marketing agreement and order regulating the handling of milk in the Bluefield marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act.

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Bluefield marketing area shall be in conformity to and compliance with the following terms and conditions:

DEFINITIONS

§ 1012.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 1012.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 1012.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions specified in this part.

§ 1012.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1012.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1012.6 *Bluefield marketing area.* "Bluefield marketing area," hereinafter called the "marketing area," means all the territory geographically located within the perimeters of the counties of Mercer and McDowell, in West Virginia, and Tazewell in Virginia.

§ 1012.7 *Fluid milk plant.* "Fluid milk plant" means (a) any plant from which a volume of Class I milk equal to an average of more than 1,000 pounds per day, or not less than 2.0 percent of the approved milk of such plant is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other fluid milk plants) located in the marketing area, (b) any plant which ships (1) any milk or skim milk during the months of February through July, or (2) an amount of milk, skim milk or cream in fluid form in excess of 70,000 pounds for the month during the months of August through January, to a plant qualified pursuant to paragraph (a) of this section, and (c) any plant which during the months of August through January receives milk from farmers holding dairy farm permits or ratings issued by a health authority having jurisdiction in the marketing area, and from which milk, skim milk or cream is moved during the month to a plant qualified pursuant to paragraph (a) of this section: *Provided,* That if a portion of a plant is operated separately and no approved milk is received in such portion of the plant, it shall not be considered as part of a fluid milk plant pursuant to this section: *And provided further,* That this definition shall not be deemed to include any building, premises or facilities the primary function of which is to hold or store bottled milk or milk products in finished form in transit for wholesale or retail route distribution.

§ 1012.8 *Approved plant.* "Approved plant" means a fluid milk plant or any plant from which Class I milk is delivered (including delivery by a vendor or sale from a plant store) during the month to retail or wholesale outlets (except fluid milk plants) located in the marketing area.

§ 1012.9 *Nonfluid milk plant.* "Nonfluid milk plant" means any milk manufacturing, processing or bottling plant other than a fluid milk plant.

§ 1012.10 *Handler.* "Handler" means any person in his capacity as the operator of an approved plant.

§ 1012.11 *Producer.* "Producer" means any person except a producer-handler, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a fluid milk plant, or (b) diverted by the operator of a fluid milk plant for his account to a nonfluid milk plant (1) any day during the months of April through July, and (2) on not more than 15 days during any of the months of August through March: *Provided,* That milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

§ 1012.12 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at the fluid milk plant directly from producers or (b) diverted from a fluid milk plant to a nonfluid milk plant in accordance with the conditions set forth in § 1012.11.

§ 1012.13 *Approved milk.* "Approved milk" means any skim milk or butterfat contained in producer milk, or in milk, skim milk or cream which is received from a fluid milk plant, except the plant of a producer-handler, and which is approved for distribution as Class I milk by the agency issuing the health permit to such plant.

§ 1012.14 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 1012.41 (a), except (1) such products approved by the ap-

propriate health authority for distribution as Class I milk in the marketing area which are received from fluid milk plants, or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 1012.41 (b) (1) from any source (including those from a plant's own production), which are reprocessed or converted to another product in the plant during the month.

§ 1012.15 *Producer-handler.* "Producer-handler" means any person who operates a dairy farm and an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1012.16 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department of Agriculture.

§ 1012.17 *Base milk.* "Base milk" means milk received at a fluid milk plant from a producer during any of the months of April through July which is not in excess of such producer's base for such month computed pursuant to § 1012.81.

§ 1012.18 *Excess milk.* "Excess milk" means either (a) milk received at a fluid milk plant from a producer during any of the months of April through July, which is in excess of base milk received from such producer during such month, or (b) milk received during such month from a producer for whom no base can be computed pursuant to § 1012.80.

MARKET ADMINISTRATOR

§ 1012.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1012.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1012.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1012.95 (1) of the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1012.94, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1012.30 and 1012.31, or payments pursuant to §§ 1012.90 through 1012.95;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Prepare and make available for the benefit of producers, consumers, and handlers such general statistics and information concerning the operation hereof as are necessary and essential to the proper functioning of this part;

(i) Verify all reports and payments by each handler by audit, if necessary, of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(j) On or before the date specified, publicly announce and notify each handler in writing of the following: (1) The 6th day of each month, the Class I price, and the Class I butterfat differential, both for the current month; (2) the 6th day of each month, the Class II price and the Class II butterfat differential, both for the preceding month; and (3) the 10th day after the end of each month, the uniform price(s), and the producer butterfat differential.

REPORTS, RECORDS, AND FACILITIES

§ 1012.30 *Reports of receipts and utilization.* On or before the 6th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his approved plants for such month as follows:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk;

(b) The quantities of skim milk and butterfat contained in products designated as Class I milk pursuant to § 1012.41 (a) (1) received from other handlers;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) Inventories of products designated as Class I milk pursuant to § 1012.41 (a) (1) on hand at the beginning and end of the month; and

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

§ 1012.31 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his fluid milk plants his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, for the months of April through July, the total pounds of base and excess milk, (iii) the days on which milk was received from such producer if less than a full month, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment, together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk is received in the form of milk, fluid skim milk or cream at his fluid milk plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

§ 1012.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and other milk products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products on hand at the beginning and end of each month; and

(d) Payments to producers, including any deductions authorized by producers, and disbursement of money so deducted.

§ 1012.33 *Retention of records.* All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if, within such three-

year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1012.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat at fluid milk plants, which is required to be reported pursuant to § 1012.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1012.41 through 1012.46.

§ 1012.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1012.43 and 1012.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of milk, skim milk, buttermilk, milk drinks (plain or flavored), cream (except frozen cream) and any mixture in fluid form of skim milk and cream (except sterilized products in hermetically sealed containers, ice cream mix, and eggnog); and (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those designated as Class I milk pursuant to paragraph (a) of this section; (2) contained in (skim milk only) any product disposed of for livestock feed; (3) dumped (skim milk only) during the months of April, May, June or July: *Provided,* That the market administrator is given not less than 6 hours' notice of the handler's intention to make such disposition; (4) contained in inventory of products designated as Class I milk pursuant to paragraph (a) of this section on hand at the end of the month; and (5) in shrinkage assigned to Class II pursuant to § 1012.42.

§ 1012.42 *Shrinkage.* The market administrator shall determine the assignment of shrinkage to Class II milk as follows:

(a) Determine the total shrinkage of butterfat and skim milk in the fluid milk plant(s) of the handler;

(b) Multiply the pounds of skim milk and butterfat in producer milk (except milk diverted pursuant to § 1012.11) and other source milk by 0.02;

(c) Multiply the pounds of butterfat and skim milk, respectively, determined pursuant to paragraph (a) or (b) of this section, whichever is less, by the percentage of butterfat and skim milk classified pursuant to § 1012.41 (a) and (b) (1) (except shrinkage determined pursuant to paragraph (a) of this section) which is in Class II milk. The resulting amounts of skim milk and butterfat shall be classified as Class II milk; and

(d) Assign the shrinkage of skim milk and butterfat classified as Class II milk pro rata to producer milk and other source milk.

§ 1012.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise;

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1012.44 *Transfers.* Skim milk or butterfat disposed of from a fluid milk plant shall be classified:

(a) As Class I milk if transferred in the form of products designated as Class I milk in § 1012.41 (a) (1) to a fluid milk plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers in the reports submitted by them to the market administrator pursuant to § 1012.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 1012.46, and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk: *And provided further,* That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I milk utilization to the producer milk of both handlers.

(b) As Class I milk if transferred to a producer-handler in the form of products designated as Class I milk in § 1012.41 (a) (1);

(c) As Class I milk if transferred or diverted in bulk form as milk or skim milk to a nonfluid plant located in the marketing area or not more than 200 miles by the shortest highway distance, as determined by the market administrator, from the City Hall, Bluefield, West Virginia, unless:

(1) The handler claims Class II on the basis of utilization mutually indicated in writing to the market administrator by both buyer and seller on or before the 6th day after the end of the month within which such transaction occurred;

(2) The buyer maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available, if requested by the market administrator for the purpose of verification; and

(3) Not less than an equivalent amount of skim milk and butterfat was actually used as Class II milk in such buyer's plant.

(d) As Class I milk if transferred in bulk form as cream to a nonfluid plant unless:

(1) Such cream is transferred without Grade A certification of any health authority;

(2) The handler claims Class II in his report submitted to the market administrator pursuant to § 1012.30 on or before the 6th day after the end of the month within which such transaction occurred;

(3) The buyer maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available, if requested by the market administrator for the purpose of verification; and

(4) Not less than an equivalent amount of skim milk and butterfat was actually used as Class II milk in such buyer's plant.

§ 1012.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors, the reports of receipts and utilization for the fluid milk plants of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1012.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 1012.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 1012.42 (d);

(2) Subtract from the remaining pounds of skim milk in Class II milk, the pounds of skim milk in other source milk (that derived from milk priced under another Federal order to be subtracted last): *Provided,* That if the receipts of skim milk in other source milk are greater than the remaining pounds of skim milk in Class II milk, an amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

(3) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk contained in inventory of products designated as Class I milk pursuant to § 1012.41 (a) (1) on hand at the beginning of the month: *Provided,* That if the pounds of skim milk in such inventory are greater than the remaining pounds of skim milk in Class II milk, an amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

(4) Subtract from the remaining pounds of skim milk in each class the skim milk received from the fluid milk plants of other handlers in the form of products designated as Class I milk in § 1012.41 (a) (1), according to its classification as determined pursuant to § 1012.44 (a);

(5) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(6) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be known as "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of the Class I and Class II milk allocated to producer milk.

MINIMUM PRICES

§ 1012.50 *Basic formula price.* The highest of the prices computed pursuant to paragraph (a) or (b) of this section and § 1012.51 (b), rounded to the nearest whole cent, shall be known as the basic formula price.

(a) To the average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Bellesville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

add an amount computed by multiplying the Chicago butter price for the month by 0.6.

(b) The price per hundredweight computed as follows: Multiply the Chicago butter price by 4.0, add 20 percent thereof, and add to such sum 3¾ cents for each full ½ cent that the average of carlot prices per pound of nonfat dry milk solids, spray and roller process, for human consumption, f. o. b. Chicago area manufacturing plants, as reported by the Department of Agriculture for the period from the 26th day of the immediately preceding month through the 25th day of the current month, is above 5 cents.

§ 1012.51 *Class prices.* Subject to the provisions of §§ 1012.52 and 1012.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* For each month during the eighteen-month period following the effective date of this order the Class I milk price shall be the basic formula price for the preceding month, plus $1.45 during the months of April, May and June; $1.70 during the months of March and July; and plus $2.10 during all other months.

(b) *Class II milk price.* For the months of March through August, the Class II milk price shall be the price computed pursuant to subparagraph (1) of this paragraph, and for all other months the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) The average of the basic (or field) prices reported to have been paid or to be paid per hundredweight for milk of 4.0 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture on or before the 6th day after the end of the month:

Company and Location

Pet Milk Co., Mayfield, Ky.
Pet Milk Co., Bowling Green, Ky.
Pet Milk Co., Greenville, Tenn.
Pet Milk Co., Abingdon, Va.
Carnation Co., Murfreesboro, Tenn.
Carnation Co., Statesville, N. C.
Borden Co., Lewisburg, Tenn.
Borden Co., Chester, S. C.
Carnation Co., Galax, Va.

(2) Add the amounts obtained pursuant to subdivisions (i) and (ii) of this subparagraph, and subtract 75 cents therefrom.

(i) Multiply the Chicago butter price by 4.8;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk solids, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month, by the Department of Agriculture.

§ 1012.52 *Butterfat differential to handlers.* For milk containing more or less than 4.0 percent butterfat, the class prices for the month calculated pursuant to § 1012.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate determined as follows:

(a) *Class I price.* Multiply the Chicago butter price by 0.12, and round to the nearest one-tenth cent.

(b) *Class II price.* Multiply the Chicago butter price by 0.11, and round to the nearest one-tenth cent.

§ 1012.53 *Location differentials to handlers.* For that milk which is received from producers at a fluid milk plant located 50 miles or more from the nearest of the following listed places, by shortest hard surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1012.41 (a) (1) and assigned to Class I milk pursuant to the proviso of this section, or otherwise classified Class I milk, the price specified in § 1012.51 (a) shall be reduced at the rate of 10 cents per hundredweight for a distance of not less than 50 miles but less than 60 miles, plus 1.5 cents per hundredweight additional for each 10 miles, or fraction thereof, beyond 60 miles, according to the location of the fluid milk plant where such milk is received from producers:

County Courthouse, Princeton, W. Va.
City Hall, Bluefield, W. Va.
City Hall, Welch, W. Va.

Provided, That for the purpose of calculating such location differential, products so designated as Class I milk which are transferred between fluid milk plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 1012.46 (a) (1) and (2), and the comparable steps in § 1012.46 (b) for such plant, and after deducting from such remainder an amount equal to 0.05 times the skim milk and butterfat contained in the producer milk received at the transferee-plant, such assignment to transferor plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1012.54 *Use of equivalent prices.* If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1012.60 *Producer-handlers.* Sections 1012.40 through 1012.46, 1012.50 through 1012.53, 1012.70 through 1012.72, 1012.80 through 1012.83, and 1012.90 through 1012.96 shall not apply to a producer-handler.

§ 1012.61 *Plants subject to other Federal orders.* A plant specified in paragraph (a) or (b) of this section shall be considered as a nonfluid milk plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1012.30), and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 1012.7 (a) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the Secretary determines that a greater volume of Class I milk is disposed of from such plant to retail or wholesale outlets (except fluid milk plants) in the Bluefield marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1012.7 (b) or (c) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant has qualified as a fluid milk plant pursuant to § 1012.7 (c) for each month during the preceding August through January period.

DETERMINATION OF UNIFORM PRICE

§ 1012.70 *Net obligation of handlers.* The net obligation of each handler for producer milk received at his fluid milk plant(s) during each month shall be a sum of money computed by the market administrator as follows: (a) Multiply the pounds of such milk in each class by the applicable class price; (b) add together the resulting amounts; (c) add the amounts computed by multiplying the pounds of overage deducted from

each class by the applicable class price; (d) add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and (e) add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 1012.46 (a) (3) and (b), whichever is less.

§ 1012.71 *Computation of uniform prices for handlers.* For each of the months of August through March the market administrator shall compute a uniform price for the producer milk received by each handler as follows:

(a) Add to the amount computed pursuant to § 1012.70 the total of the location differential deductions to be made pursuant to § 1012.92;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more, respectively, than 4.0 percent, an amount computed by multiplying such difference by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(d) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 4.0 percent butterfat content, f. o. b. market.

§ 1012.72 *Computation of the uniform prices for base milk and for excess milk for handlers.* For each of the months of April through July, the market administrator shall compute uniform prices for base milk and for excess milk received by each handler as follows:

(a) Add to the amount computed pursuant to § 1012.70 the total of the location differential deductions made pursuant to § 1012.92;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more, respectively, than 4.0 percent, an amount computed by multiplying such difference by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(d) Subject to the conditions set forth in paragraph (e) of this section, compute the value of excess milk received by such handler from producers by multiplying the quantity of such milk by the Class II price;

(e) Compute the value of base milk received by such handler from producers by subtracting the value obtained pursuant to paragraph (d) of this section from the value obtained pursuant to paragraph (c) of this section: *Provided,* That if such resulting value is greater than an amount computed by multiplying the pounds of such base milk by the Class I price, such value in excess thereof shall be added to the value computed pursuant to paragraph (d) of this section to the extent that the excess price shall not exceed the base price as calculated herein. Any additional value remaining shall be prorated to the respective volumes of base milk and excess milk.

(f) Divide the value obtained pursuant to paragraph (e) of this section by the hundredweight of base milk. This result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for base milk of 4.0 percent butterfat content, f. o. b. market; and

(g) Divide the sum of the values obtained pursuant to paragraph (d) and the proviso of paragraph (e) of this section by the hundredweight of excess milk in producer milk. This result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for excess milk of 4.0 percent butterfat content.

BASE RATING

§ 1012.80 *Determination of daily base.* The daily base of each producer shall be calculated by the market administrator as follows: Divide the total pounds of milk received by all handlers from such producer during the months of September through February by the number of days from the first day milk is received from such producer during said months to the last day of February, inclusive, but not less than 120 days: *Provided,* That the daily base of each producer for April, May, June and July 1957 shall be calculated by the market administrator as follows: Divide the total pounds of milk received by all handlers from such producer during the five-month period October 1956 through February 1957 by the number of days from the first day milk is received from such producer during said period to the last day of the period, inclusive, but not less than 90 days.

§ 1012.81 *Computation of base.* The base of each producer to be applied during the months of April through July shall be a quantity of milk calculated by the market administrator in the following manner: Multiply the daily base of such producer by the number of days such producer's milk was received by such handler during the month: *Provided,* That if the producer's milk was not received on a daily basis, the daily base shall be multiplied by the number of days during the month for which the milk production of such producer was received by such handler.

§ 1012.82 *Base rules.* The following rules shall apply in connection with the establishment of bases:

(a) A base shall be assigned to the producer for whose account milk is received at a fluid milk plant during the months of September through February: *Provided,* That a base computed for April, May, June and July, 1957 shall be assigned to the producer for whose account milk is received at a fluid milk plant during the months of October 1956 through February 1957.

(b) Bases may be transferred by notifying the market administrator in writing before the last day of any month for which such base is to be transferred to the person named in such notice only as follows:

(1) In the event of the death, retirement, or entry into military service of a producer, the entire base may be transferred to a member of such producer's immediate family who carries on the dairy operations.

(2) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders.

(3) The entire daily base of a producer may be removed from one handler to another handler regulated under this order.

§ 1012.83 *Announcement of established bases.* On or before April 1 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily base established by such producer.

PAYMENTS

§ 1012.90 *Payments to producers.* Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 15th day after the end of each month, each handler shall make payment to each producer for milk which was received from him during the month at not less than the uniform price computed pursuant to § 1012.71 for the months of August through March, and at not less than the uniform price for base milk computed pursuant to § 1012.72 with respect to base milk received from such producer and at not less than the uniform price for excess milk computed pursuant to § 1012.72 with respect to excess milk received from such producer for the months of April through July, subject to the following adjustments: (1) The butterfat differential pursuant to § 1012.91, (2) the location differential pursuant to § 1012.92, (3) marketing service deductions pursuant to § 1012.94, (4) proper deductions authorized in writing by the producer, and (5) adjustments for errors in calculating payment to such individual producer for past months: *Provided,* That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk, the handler shall, if requested by the cooperative association, pay such cooperative association on or before the 13th day after the end of each month, an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph;

(b) In making the payments to producers pursuant to paragraph (a) of

this section, each handler shall furnish each producer from whom he had received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 1012.91 *Butterfat differential to producers.* The applicable uniform prices to be paid each producer pursuant to § 1012.90 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the pounds of butterfat in the producer milk of such handler allocated to Class I and Class II milk pursuant to § 1012.46 (b) by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 1012.92 *Location differential to producers.* In making payment to producers pursuant to § 1012.90, the applicable uniform prices to be paid for producer milk received at a fluid milk plant located 50 miles or more from the nearest of the following listed places, by the shortest hard-surfaced highway distance, as determined by the market administrator, shall be reduced according to the location of the fluid milk plant where such milk was received at the following rate: County Courthouse, Princeton, West Virginia; City Hall, Bluefield, West Virginia; or City Hall, Welch, West Virginia.

Distance in miles	*Rate per hundredweight (cents)*
50 but not less than 60	10
For each additional 10 miles (or fraction thereof) an additional	1.5

§ 1012.93 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's reports, books, records, accounts, or verification of weights and butterfat tests of milk or milk products disclose errors, resulting in money due a producer or the market administrator from such handler, or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

§ 1012.94 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1012.90, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments, to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month, and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount and average butterfat test of milk for which such deduction was computed for each producer. In lieu of this statement, a handler may authorize the market administrator to furnish such cooperative association the information reported for such producers pursuant to § 1012.90 (b).

§ 1012.95 *Expense of administration.* As his prorata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month for such month 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight; as the Secretary may prescribe with respect to all (a) receipts of producer milk including such handler's own production, (b) other source milk at a fluid milk plant which is classified as Class I milk and, (c) Class I disposed of during the month on routes (including routes operated by vendors) to retail or wholesale outlets (except fluid milk plants) located in the marketing area from a nonfluid milk plant.

§ 1012.96 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator received the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1012.100 *Effective time.* The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1012.101.

§ 1012.101 *Suspension or termination.* The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provisions of this part obstructs or does not tend to effectuate the declared policy of the act. This part shall terminate, in any event, whenever the provisions of the act authorizing it cease to be in effect.

§ 1012.102 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final

accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1012.103 *Liquidation.* Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignment or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1012.110 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his Agent or Representative in connection with any of the provisions of this part.

§ 1012.111 *Separability of provisions.* If any provision of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.